

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DEMOCRATIC NATIONAL COMMITTEE,

Plaintiff, Civil Action No. 1:18-cv-03501 (JGK)

v.

THE RUSSIAN FEDERATION *et al.*,

Defendants.

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**MOTION TO SERVE DEFENDANT PAUL J. MANAFORT, JR. BY FIRST CLASS
MAIL AND EMAIL TO HIS CRIMINAL ATTORNEYS**

Plaintiff DNC (“Plaintiff”) respectfully requests permission to serve the Complaint on Defendant Paul J. Manafort, Jr. (“Manafort”) by: (a) sending it via first class mail to the Alexandria Detention Center where Manafort is currently located; and (b) sending it via first class mail and email to his criminal defense counsel. This procedure is the best available method for serving Manafort while he is in federal custody.

I. Procedural History

Plaintiff filed this case on April 20, 2018 and has since been working diligently to serve the Defendants. On May 2, 2018, Plaintiffs mailed service waivers to the Defendants with addresses in the United States, including Manafort, but Manafort did not return the waiver by the June 2, 2018 deadline. Plaintiff therefore retained Capitol Process Services, Inc. (“CPS”) to serve Manafort at his home in Palm Beach Gardens, Florida. On June 14, 2018, CPS reported that it had attempted to serve Manafort several times by knocking at the door and/or ringing the doorbell, looking for signs of Manafort’s car in the driveway, and speaking with the security personnel who guard Manafort’s residence, but they were unsuccessful. (Ex. A).

Plaintiff knew that Manafort had a scheduled court appearance at the E. Barrett Prettyman Courthouse in Washington, D.C. on June 15, 2018 (because the hearing was widely reported by the media). Plaintiff therefore asked CPS whether it would be feasible to serve Manafort on his way into the courthouse, but CPS concluded that it would not be. (Ex. B).

At the June 15 hearing, the U.S. District Court for the District of Columbia ordered that Manafort be held in federal custody while he awaits his criminal trial. When Plaintiff learned that Manafort had been detained in the Northern Neck Regional Jail in Warsaw, Virginia, it asked CPS if Manafort could be served there. (Ex. B). On June 19, 2018, CPS contacted the U.S. Marshal's Office in Richmond, Virginia, and was informed that inmates being held under federal statute cannot be made available to accept process in a civil case. (Ex. B).

Between June 19, 2018 and July 9, 2018, CPS tried to serve the Complaint at Manafort's Florida residence two more times. (Ex. C). While CPS servers saw a car in Manafort's driveway, they were not able to serve the complaint on anyone inside the house. (Ex. C). CPS also tried to serve the complaint at Manafort's residences in New York and Virginia. (Exs. B, D). However, CPS was informed by security personnel at the New York residence that Manafort has not lived there for over a year. (Ex. D). CPS also attempted service on Manafort's Virginia home three times, but the security guard refused to let the process server up to Manafort's apartment. (Ex. B). The guard called the apartment and the listed assistants for Mr. Manafort, but no one was able to accept service on his behalf. (Ex. B).

On July 10, 2018, Manafort was transferred to a jail in Alexandria, Virginia so that he could be closer to his trial counsel.¹

¹ Order, *United States v. Manafort*, 18-cr-00083 (July 10, 2018), ECF No. 120.

II. Analysis

Federal Rule of Civil Procedure 4(e) outlines four acceptable procedures for serving a summons and complaint: (1) “delivering a copy of the summons and of the complaint to [a defendant] personally”; (2) “leaving a copy of each at the [defendant’s] dwelling or usual place of abode with someone of suitable age and discretion who resides there”; (3) “delivering a copy of each to an agent authorized by appointment or by law to receive service of process”; and (4) “following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made.” The first three procedures are currently unavailable to serve Manafort. The Marshals will not produce Manafort to be served personally. (Ex. B). At the same time, CPS has repeatedly tried and failed to serve the Complaint at Manafort’s dwellings. (Exs. A, B, C, D). Finally, Plaintiff does not know of any agent authorized to accept service on Manafort’s behalf.

Thus, the only realistic option for serving Manafort is by “following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located [i.e., New York].”² New York law provides five procedures for serving a summons on a defendant. The first four procedures can only be carried out if the defendant, his “dwelling place or usual place of abode,” his “actual place of business,” or his designated agent

² Plaintiff does not believe it is reasonably possible to serve Manafort by following any other state law. *See Fed. R. Civ. P. 4(e)(1)* (allowing a summons to be served by “following state law for serving a summons in an action brought in courts of general jurisdiction in the state where . . . service is made.”). For example, it is not reasonably possible to serve Manafort under the laws of Virginia (where Manafort is being held) because the Marshal will not allow him to accept service personally, security guards will not permit service at his home in Virginia, and service by publication is unlikely to be effective in light of his confinement. *See Va. Code Ann. § 8.01-296.* Nor is it reasonably possible to serve Manafort under the laws of Florida (where his home is located) because no one will answer the door at his residence. *See Fla. Stat. Ann. § 48.031.*

is located “within the state” of New York. N.Y. C.P.L.R. § 308(1)-(4); *see also Ahn v. Inkwell Pub. Sols., Inc.*, No. 10 CIV. 8726 KNF, 2013 WL 3055793, at *4 (S.D.N.Y. June 19, 2013). If service by those four procedures would be “impracticable,” then the summons may be served “in such manner as the court, upon motion without notice, directs.” N.Y. C.P.L.R. § 308(5).

In this case, it would be “impracticable” to serve Manafort using any of first four procedures identified in N.Y. C.P.L.R. § 308 because Manafort does not travel, live, work, or have a designated agent “within the state” of New York: Manafort is confined to his jail cell in Virginia; Plaintiff’s process servers were informed that Manafort has not lived at his New York apartment for over a year (Ex. D); Manafort has no “actual place of business” while he is in jail; and he has no known “agent” who will accept service on his behalf, either in New York or otherwise. Plaintiff therefore moves for an order allowing service on Manafort “in such a manner as the court . . . directs.” N.Y. C.P.L.R. § 308(5). *See Jackson v. Lowe’s Companies, Inc.*, No. 15-CV-4167(ADS)(ARL), 2016 WL 6155937, at *2 (E.D.N.Y. Oct. 21, 2016) (“Section 308(5) requires a showing of impracticability of other means of service, but does not require proof of due diligence or of actual prior attempts to serve a party under the other provisions of the statute.” (quoting *S.E.C. v. HGI, Inc.*, No. 99-CV-3866, 1999 WL 1021087, at *1 (S.D.N.Y. Nov. 8, 1999))).

In fashioning an alternative means of service, the Court may choose any method that is “reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Philip Morris USA Inc. v. Veles Ltd.*, No. 06 Civ. 2988, 2007 WL 725412, at *2 (S.D.N.Y. Mar. 12, 2007) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)); *see also Dobkin v. Chapman*, 21 N.Y.2d 490, 499 (1968) (noting that courts have “broad” discretion to design an

alternative means of serving a defendant). Plaintiff believes that, in light of Manafort's incarceration, the method of service most likely to appraise him of this litigation is to send a copy of the summons, Complaint, the Court's Electronic Case Filing Rules and Instructions, and the Individual Practices of Judge John G. Koeltl (a) via first class mail it to the Alexandria Detention Center; and (b) via first class mail and email to his criminal defense counsel. Manafort can likely receive mail while he is incarcerated, and his criminal defense attorneys will certainly be able to speak with Manafort and give him a copy of the Complaint while they are preparing for Manafort's criminal trial.³ Thus, this double mailing is reasonably likely to put Manafort on notice of the impending litigation. *Cf. Dobkin*, 21 N.Y.2d at 505–06 (holding that, under N.Y. C.P.L.R. § 308(5), a defendant could be served by mailing a copy of the complaint both to his last known address and to his automobile insurance company, which would likely be in contact with him).

III. Conclusion

For the foregoing reasons, Plaintiff respectfully requests leave to serve the summons and the Complaint on Manafort (a) sending it via first class mail it to the Alexandria Detention Center; and (b) sending it via first class mail and email to his criminal defense counsel.

³ The judge presiding over Manafort's criminal trial ordered that he be permitted to meet and confer with his attorneys at least eight hours per day. Order, *United States v. Manafort*, 18-cr-00083, ECF No. 120.

Dated: June 13, 2018

Respectfully submitted,

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/s/ Joseph M. Sellers

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CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2018, I electronically filed the Motion to Serve Defendant Paul J. Manafort Jr. by First Class Mail and Email to His Criminal Attorneys with the Clerk of the Court using ECF, which in turn sent notice to all counsel of record.

Dated: July 16, 2018

/s/ Julia A. Horwitz

Julia A. Horwitz